IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No. 18578 of 2005

Date of decision : 31-10-2006

Shishan Kumar … Petitioner

Versus

Presiding Officer and another. … … Respondents

CORAM:- HON'BLE MR. JUSTICE J.S.NARANG
HON'BLE MR. JUSTICE ARVIND KUMAR

Present: Mr. Deepak Sharma, Advocate,
for the petitioner

Mr. D.S.Nalwa, Addl. AG Haryana,
for respondent No.2.

…

ARVIND KUMAR, J:

Petitioner has invoked the extraordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari for quashing of award dated 25.2.2005, Annexure P-1, whereby the learned Labour Court,Ambala, dismissing his claim statement, and further writ in the nature of Mandamus directing the respondents to reinstate him with full back wages with interest at the rate of 18 per cent per annum and other consequential benefits.

It is the case of petitioner-workman that he was appointed on 15.9.1991 as Helper at villlage Dhanana by respondent No.2, namely, The Executive Engineer, PWD(Public Health, Division Naraingarh, District Ambala (hereinafter referred to as the department) on daily wages He worked there till 1.5.1993 without any break and as such, completed 240 days in a calendar year. His services were terminated by the respondent-department in violation of Section 25(F) of the Industrial Disputes Act,1947 (in short the Act) without giving him any notice or compensation in lieu

thereof. The workers juniors to him were retained and even fresh appointments were made thereafter. He accordingly challenged the termination order by serving upon the respondent-management a demand notice. Later, the dispute was referred to the Labour Court for adjudication. Petitioner-workman filed claim statement. Upon notice of the same, respondent-management in its written statement denied that the services of the workman were terminated. It took up the plea that it was the workman who stopped coming on work without any intimation and did not approach the management for work at any time thereafter. It was peladed that the claim of the workman is hopelessly barred by time as he raised the demand notice after seven years of his leaving the job.

In support of their respective case, evidence was led by the parties.

The learned Labour Court on appreciation of evidence led by the parties, passed the impugned award in the manner indicated above. Hence, the present writ petition by the workman.

Upon notice of the writ petition, written statement has been filed by the respondent-department. It has been stated therein that the the demand notice had been served belatedly after a period of about seven years. Petitioner-workman never worked for 240 days in a calendar year and that he was working purely on daily wage basis. On these averments, dismissal of the writ petition has been sought.

Replication has filed by the petitioner-workman to the written statement denying the averments contained therein and reiterating the one in the writ petition.

We have heard the learned counsel for the parties.

The plea of the petitioner-workman is that though he had completed 240 days, yet his services were terminated with effect from 1.5.1993 without compliance of Section 25-F of the Act. The arguments have been scanned. Section 25-F of the Act provides protection to a workman from illegal retrenchment who has completed 240 days of continuous service in a year or say 12 calendar months preceding the date of his termination. Undisputedly, the burden of proof is on the workman to show that he had in fact worked for more than 240 days in the year preceding his termination, as held in **Range Forest Officer v.**

S.T.Hadmani, JT 2002(2) SC 238, Manager, Reserve Bank of India, Bangalore v. S.Mani and others, 2005(5) SCC 100 and R.M.Yellati v. The Asstt. Executive Engineer, 2006(1) SCC 106. This burden has to be discharged by the workman by adducing cogent and sufficient evidence. However, a perusal of the record and the impugned award shows that it is no where proved by the petitioner-workman that he had completed 240 days when his services were terminated. No doubt, respondent-department in the written statement admitted that he was engaged on 15.9.1991 as Helper and worked upto 30.4.1993 but this alone is not sufficient to prove that he worked uninterruptedly during the said period when the record speaks otherwise. MW-1 Devi Lal is the management witness. He in his statement has categorically stated that the workman had served from September 1991 to April 1993 but with breaks. This version had not been questioned in the cross-examination as there is no such suggestion put to him that the workman served regularly during the above-said period. The statement of MW-1 Devi Lal is also not in isolation. He has proved Exhibit M-1, the statement showing monthwise working days and also muster-roll/pay bills, Exhibits M-2 to M-12. The learned Labour Court in the impugned award has dealt the number of days he had worked from September 1991 to April 1993. They only constitute 127 days and not 240 days in the preceding 12 calendar months from the date of termination of his services. On the strength of oral as well as documentary evidence, the learned Labour Court has rightly concluded that he had not completed 240 days in the preceding 12 calendar months from the date of termination. He is thus, not entitled to any protection contemplated under Section 25-F of the Act.

Coming to the plea of abandonment put forth by the respondent-department, the question whether the employee has abandoned his services is a question which is required to be resolved in the light of facts and circumstances of each case. There cannot be any strait-jacket formula in that regard. However, the intention may be inferred from the act and conduct of the employee. He in the event of termination of his services with effect from 1.5.1993, was expected to redress his grievance to the concerned Authorities. If his grievance was not redressed there, then he could have approached the Labour Authorities. In that situation, he would not have remained mum till reference was made after 7-1/2 years on

27.11.2000. In this back-drop of the facts, in our view, it has rightly been held by the learned Labour Court that the workman had abandoned the service. There is nothing to impress us to take a contrary view.

Learned counsel for the petitioner has referred to the decisions rendered by the Hon'ble Supreme Court in the cases of **Ajaib Singh v. Sirhind Cooperative Marketing-cum-Processing Service Society Limited and another 1999 (6) SCC 82** and **Sapan Kumar Pandit v. U.P. State Electricity Board and others 2001 (6) SCC 222** to contend that there is no period of limitation prescribed under the Industrial Disputes Act, 1947 (for brevity, the Act) to raise the dispute. It is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. Afore-stated references have been perused. In Ajaib Singh's case (supra) the management did not raise any plea of delay and the Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In Sapan Kumar's case (supra) it was not that the workmen had slept during the long period and woken after the end of 15 years, when the dispute was referred by the appropriate government to the Labour Court on 29.3.1993. The workman but had been pursuing their grievance in between. In this context, it has been held that when the dispute remained alive though not galvanized by the workmen or the union on account of other justified reasons, it does not cause the dispute to wane into total eclipse. However, it has also been observed that when the dispute had not been kept alive during the long interval, it is reasonably possible to conclude in a particular case that the dispute ceased to exist after some time.

In the instant case, the workman had raised the industrial dispute after about 7-1/2 years. His only plea is that he had been visiting the office of respondent-department who assured that he will be taken back in service. This would not suffice. There is nothing to show as to whom he had approached who had given such an assurance. This issue has already been dealt with by the Labour Court. A perusal of the same shows that he when appeared as a witness, did not utter even a single word to prove it.

Even otherwise, a bare perusal of the demand notice, Annexure P-2, shows that no such plea had been taken by him in that regard.

The issue of delay has also been discussed by Hon'ble Supreme Court in the recent case of **Haryana State Coop. Land Dev. Bank v. Neelam 2005(2) RSJ 438** wherein the ratio of **Ajaib Singh's** case has also been noticed. It has been opined that although the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in **Ajaib Singh's** case(supra), but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court. Thus, the decision of **Ajaib Singh's** case (supra) must be held to have been rendered in the facts and situation obtaining therein. No ratio of universal application can be culled out therefrom. The conclusion thus was drawn that **"**the conduct of workman in approaching the Court after more than 7 years had, therefore, been considered to be a relevant factor by the Labour Court for refusing to grant any relief to her. Such a consideration on the part of the Labour Court cannot be said to be an irrelevant one."

Similarly in the instant case such unexplained inordinate delay has rendered the dispute in question as patently stale. The dispute having been raised after a long time lapses by efflux of time.

In view of what has been stated above, we are of the opinion that the Labour Court has rightly declined the indulgence. We do not find any infirmity with the award passed by the Labour Court, which is just and reasoned. Accordingly, the petition being without any merit stands dismissed.

(ARVIND KUMAR)
JUDGE

(J. S. NARANG)
JUDGE

October 31, 2006
JS